

## BIC Discussion on Mandatory Referral Process for BRAC Projects

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As part of the legislation that created the Park and Planning Commission in 1927, State law requires all federal, state, and local governments and public utilities to submit their projects for Mandatory Referral review and approval by the Commission. The scope of the projects to be submitted is broad in that it covers the proposed location, character, grade and extent of any road, park, public way or ground, public building or structure, or public utility.

The **Uniform Standards for Mandatory Referral Review** are posted on our website ([http://www.montgomeryplanning.org/info/mr\\_standards.pdf](http://www.montgomeryplanning.org/info/mr_standards.pdf)). As part of their submission, applicants are required to submit a **Natural Resource Inventory and Forest Stand Delineation (NRI/FSD)** to enable a review of the environmental impacts. **Thirty (30) days** are allowed for this review.

Once the NRI/FSD is approved, a determination is then made as to whether the project is eligible for a **Forest Conservation Exemption**, which is the case for smaller projects and for State projects that will be reviewed by the MD Department of Natural Resources. This is a regulatory process under the County's **Forest Conservation Law**.

For the BRAC intersection projects, we have two existing **Forest Conservation Easements** that were created as part of development approval and may be impacted by the proposed projects, one at HHMI in the SW corner of MD185/JBRd and one at the Bethesda Crest development NW of the MD355/Cedar intersection. The Commission is the custodian of these easements and the Board would have to approve modifications.

Projects that aren't eligible for an exemption must prepare a **Forest Conservation Plan**. If all the submittal requirements have been met, the review of that plan runs concurrently with the **Mandatory Referral**, which has a **sixty (60)-day** review period. The MR will be reviewed by Transportation, Environmental, Parks, Urban Design, Historic Preservation, and Community-Based Planning staff.

The hearing for the Mandatory Referral and any other associated reviews is open to the public, who may testify in person, by letter or e-mail to the Chairman.

The Planning Board must act first on the Forest Conservation Plan, and in the case of the intersection projects, on the FC easement modifications, before considering the Mandatory Referral. If the FCP is denied, the MR will not be acted on since the project would not be in compliance with the Forest Conservation Law. If the FCP is approved or approved with conditions, the Board will act on the MR. If the FC easement modifications are denied, the MR can still be acted on, but SHA would need to modify their plans to avoid the easements.

The Board may approve the Mandatory Referral, approve it with comments, or deny it. The Board's action on the MR is advisory and the implementing agency may overrule the denial or the comments associated with an approval.

For impacts to park property, County projects receive a park permit with conditions; State projects normally receive permission via an MOU which would include any applicable conditions. The permit or MOU would be finalized some time after the MR hearing but the draft conditions would be discussed during the Board's hearing. Two areas of parkland could be affected by the BRAC projects. There is existing parkland in the NE corner of MD355/Cedar where SHA proposes to construct a SWM facility. North Chevy Chase Local Park could also be impacted by road construction in two of the proposed alternatives now being considered by MCDOT as part of their Chevy Chase Valley Neighborhood Traffic Study.

As part of our MR review, Historical Preservation staff will review the projects and their comments are included in the staff memo to the Board, but there are additional reviews needed for projects with an impact on historic properties. For State projects, they are reviewed by the Maryland Historical Trust. For County projects, a Historic Area Work Permit must be approved by the County's Historic Preservation Commission.

Following the MR hearing, the Board sends a letter with the Board sends a letter with their decision and comments to the implementing agency, as well as an official finding on the Forest Conservation Plan.

Chapter 22A of the County Code is the Forest Conservation Law

Sec. 22A-9(a)(2) applies to County highway projects. It requires a Forest Conservation Plan for projects with over 40K s.f. of disturbance and that forest impacts be minimized.

Sec. 22A-11(e) requires Forest Stand Delineation or a Forest Conservation Plan, and you need a NRI/FSD in order to be able to show what's required in the FCP. If an FCP is not required, a simplified NRI/FSD can be submitted.

Sec. 22A-11(e) requires that a Forest Conservation Plan must be acted on before the Board's review of a Mandatory Referral.

***Sec. 22A-5(e) states that State projects are exempt if they are reviewed under Sec. 5-103 of the Natural Resources Law. We require a letter from the Department of Natural Resources be submitted stating that they will be reviewing the project.***

Forest Conservation Regulations

Projects that are required to submit a FCP are subject to Section 106. Those that meet the requirements of Sec. 106(A)(1) may submit a simplified NRI/FSD.

Projects that are eligible for a Forest Conservation Exemption are subject to Section 111.

Mandatory Referral Guidelines (adopted by Planning Board)

State that an approved NRI/FSD is part of the submittal requirements for Mandatory Referrals and FCP.